

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION BY AT&T)	
COMMUNICATIONS OF THE SOUTH)	
CENTRAL STATES, INC. FOR)	
ARBITRATION OF CERTAIN TERMS)	
AND CONDITIONS OF A PROPOSED)	CASE NO. 96-478
AGREEMENT WITH GTE SOUTH)	
INCORPORATED CONCERNING)	
INTERCONNECTION AND RESALE)	
UNDER THE TELECOMMUNICATIONS)	
ACT OF 1996)	

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O R D E R

The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 ("the Act") was enacted to open all telecommunications markets to competition. See Conference Report, H.R. Rep. No. 458, 104th Cong., 2d Sess., at 113 (1996). Section 251 of the Act requires incumbent local exchange carriers ("ILEC") to negotiate in good faith with new entrants to the local exchange market. Section 252 permits the parties to those negotiations to petition a state commission to arbitrate unresolved issues. Subsection (b)(4)(C) states that the state commission "shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement." Subsection (b)(4)(C) further requires the Commission to resolve the issues presented not later than nine months after the date on which the ILEC received the request for negotiations.

On May 14, 1996, AT&T Communications of the South Central States, Inc. ("AT&T") submitted its request for negotiations to GTE South Incorporated ("GTE"). On

October 10, 1996, AT&T submitted its petition for arbitration to this Commission. Subsequently, GTE filed its response. The parties have submitted numerous documents, including prefiled testimony and exhibits, have met with Commission staff in informal conference at the Commission's offices, and have participated in a formal hearing held January 13 and 14, 1997. Pursuant to the Act, the Commission's decision on the arbitrated issues is due on February 14, 1997.

On December 18, 1996, AT&T and GTE filed a joint motion ("Joint Motion") which (1) requested modification of the procedural schedule issued on October 21, 1996, and (2) sought to amend the petition and response to clarify that the parties seek resolution only of the unresolved issues listed in an attachment to the Joint Motion (the "Joint Issues List"). The Joint Motion was granted by Order dated January 8, 1997. Accordingly, only those issues cited in the parties' Joint Issues List are resolved in this Order.¹ The parties also requested they be required to submit, within 30 days of the Order resolving the disputed issues, best and final offers on each contract provision which is within the parameters of an issue on the Joint Issues List and upon which they remain unable to agree. The parties agree, see Joint Motion at 2, that the procedure requested is consistent with this Commission's obligations under the Act.

As the Commission stated in its January 8, 1997 Order granting the Joint Motion, the emphasis in the Act is on free negotiations between the parties. The procedure requested by the parties emphasizes such free negotiation, with Commission assistance

¹ The Agreed List of Issues contains issues that remain open, issues that are partially resolved, and issues that are wholly resolved. This Order deals only with those issues which remain partially or wholly in dispute.

only when necessary. Consequently, the Commission will require the parties to submit for final decision their best and final offers on specific issues upon which they remain unable to agree within 30 days of the date of this Order. Since, however, this Order resolves the broad questions presented, the best and final offers submitted should differ only as to the finer points of the parties' disagreements.

I. SERVICES TO BE OFFERED FOR RESALE AND
RESTRICTIONS AND EXCLUSIONS THEREON
(PARTIES' ISSUES 1 AND 2)

The Commission has addressed services to be offered for resale and restrictions on resale relative to GTE in Administrative Case No. 355² and Case No. 96-440.³ The decisions in those cases apply here unless specifically modified below. The discussion that follows addresses issues specifically raised by AT&T and GTE in this proceeding.

In Contact Services

In contact services are retail services that utilize Advanced Intelligent Network ("AIN") triggers within the switch to allow customized call handling. GTE has agreed to offer all AIN services currently in GTE's tariff for resale at wholesale rates.⁴ However, GTE declines to offer future AIN-based services for resale because outstanding issues

² Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and The Non-Traffic Sensitive Access Rate.

³ Case No. 96-440, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale under the Telecommunications Act of 1996.

⁴ Direct Testimony of Douglas E. Wellemeyer on Behalf of GTE, filed December 20, 1996, at 53.

remain regarding trigger access to AT&T's network platform and services.⁵ In Case No. 96-440, the Commission decided that it would review new service offerings in the future and make a determination as to whether they should be made available for resale on a case-by-case basis. The Commission affirms this decision. GTE should bear the burden of proof, if it contends that a future service should not be available for resale.

Contract Service Arrangements

AT&T opines that contract service arrangements ("CSAs") are telecommunications services available to users who are not telecommunications providers as defined by the Act and should therefore be available for resale under Section 251(c)(4)(A). It requests that GTE be required to offer existing and future CSAs for resale. AT&T contends that CSAs are essentially long-term promotions because they are offered to a select group of customers at below-tariff prices. AT&T requests the Commission to apply the same rationale to CSAs as it did to long-term promotions in Administrative Case No. 355 and require GTE to offer CSAs for resale at the CSA price less the wholesale discount. AT&T seeks reconsideration of the Commission's previous decision that GTE may offer these services for resale at the retail rate, as opposed to the wholesale rate, because these rates are competitive. AT&T argues that the Act does not exclude "competitive prices" from an ILEC's wholesale obligations.

The Commission does not concur with AT&T's characterization of CSAs as essentially long-term promotions offered to a select group of customers. There is a clear distinction between promotions and CSAs. Promotions are offered to the general

⁵ Id.

subscribership of the ILEC. All of the customers subscribing to the promotion receive service under the same conditions and subject to the same incentives. CSAs, on the other hand, are arrangements tariffed for a single customer in response to competition from other carriers.

The Commission has decided in previous orders that CSAs, as such, will not be required to be made available for resale. In Case No. 96-482, the Commission clarified this decision.⁶ In that case, the Commission found that CSAs generally constitute pricing and/or packaging innovations regarding services offered pursuant to tariff rather than additional "services" in themselves. The Commission therefore decided that CSAs will be available for resale at the contract rate with no discount applied, if the underlying services are not contained in GTE's tariff. However, if the underlying services are contained in GTE's tariff, the reseller may purchase those services only at the wholesale discounted rate. The Commission affirms its prior rulings.

Promotions

AT&T requests that short-term promotions (90 days or less) be available for resale at the promotional rate and that long-term promotions (greater than 90 days) be resold at the promotional rate less the wholesale discount. GTE contends that there is no pro-competitive reason for it to offer any promotions at a discount. GTE further contends that it will never be able to distinguish its offerings from those of its competitors, if the

⁶ Case No. 96-482, The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C., Order dated February 6, 1997 at 4.

Commission does not restrict resale of promotions. The Commission rejects GTE's arguments and reaffirms its previous decisions that: (1) short-term promotions will not be available for resale at the wholesale discounted rate, (2) the underlying services of short-term promotions will be available for resale at the tariffed rate less the wholesale discount, and (3) long-term promotions will be available for resale at the promotional rate less the wholesale discount. As previously noted, a competitor may offer any promotional incentive it wishes to respond to GTE's promotion.

Use and User Restrictions

AT&T requests that GTE be required to demonstrate the reasonableness of any use and user restriction it may propose. In Case No. 96-482, the Commission modified its decision reached in Case No. 96-431 to require that an ILEC must support its position that a particular tariff condition or limitation is reasonable. The Commission affirms this decision in this docket. Accordingly, GTE must support its position that a particular tariff condition or limitation is reasonable.

Residential Services

AT&T requests that GTE be required to offer residential services for resale. GTE argues that it should not be required to do so because they are "below cost" services. The Commission ruled in Administrative Case No. 355 and Case No. 96-440 that GTE must make residential and allegedly below-cost services available for resale at the wholesale discounted rate. The Commission affirms these decisions based upon the same rationale presented in Case No. 96-440.⁷

⁷ Case No. 96-440, Order dated December 23, 1996 at 3-4.

Voicemail and Inside Wire Services

AT&T requests that the Commission reconsider the decision it reached on this issue in Case No. 96-440. In that case, the Commission found that voicemail and inside wire service would not be available for resale.⁸ However, upon MCI's petition for rehearing in Case No. 96-440, the Commission granted MCI's request in part and allowed voicemail to be available for resale, but rejected MCI's request to require the resale of inside wire service.⁹ The Commission affirms these decisions.

Other Services

GTE has agreed to allow the resale of certain other services but not at the wholesale discounted rate. These services include operator and directory assistance services, payphone services, special access and private line services tariffed under the special access tariff, and non-recurring charge services. The Commission ruled in Case No. 96-440 that GTE must make these services available for resale at the wholesale discounted rate.¹⁰ The Commission affirms its prior decisions concerning these services.

II. APPROPRIATE WHOLESALE RATES FOR RESOLD SERVICES, INCLUDING APPROPRIATE METHODOLOGY FOR DETERMINING THE RATES (PARTIES' ISSUES 22, 23, and 24)

AT&T filed with the PSC an avoided cost study based upon the Federal Communications Commission's ("FCC") methodology, with certain modifications. AT&T's

⁸ Id. at 5.

⁹ See Order dated February 4, 1997 at 2.

¹⁰ Case No. 96-440, Order dated December 23, 1996 at 4-5.

calculation produced a wholesale discount rate of 24.72 percent.¹¹ GTE filed two avoided cost studies. One cost study produced rates for each group of services ranging from 5.5 percent to 15.3 percent and the other cost study, based upon the FCC's methodology, produced a composite rate of 9.16 percent.¹² Both of GTE's studies were based upon studies that were conducted to identify costs in its national service centers. The avoided cost studies filed by GTE in this docket are the same as those filed in Case No. 96-440.

In Case No. 96-440, the Commission ordered GTE to use an interim rate of 18.81 percent until it files an avoided cost study based upon verifiable Kentucky-specific data. It is imperative that only state-specific expense data be considered because the retail rates subject to resale are based upon state-specific data, including expenses. Only by matching state-specific expenses with the prices to which they relate can the Commission be reasonably certain that this relationship is maintained in the wholesale discount rate determination. The Commission will set a permanent wholesale rate based upon the state-specific studies that it receives from GTE.

GTE has argued that there should be a methodology established for determining the new costs that it might incur by reselling its services. GTE has failed, however, to provide evidence supporting the alleged new costs. AT&T argues that the recovery of any of these "new costs" is inappropriate as it is not provided for in the Act and cannot

¹¹ Post Hearing Exhibits of AT&T, Exhibit 7(a).

¹² Direct Testimony of Douglas E. Wellemeyer on Behalf of GTE, filed December 20, 1996, at 8.

be identified by GTE. The Commission concurs with AT&T, and affirms its previous decision that an interim rate of 18.81 percent will be used until the Kentucky-specific data is considered by the Commission.

III. ACCESS TO TWELVE SPECIFIED UNBUNDLED NETWORK ELEMENTS REQUESTED BY AT&T, INCLUDING ALL THE FEATURES, FUNCTIONS, AND CAPABILITIES OF EACH ELEMENT (PARTIES' ISSUE 15)

AT&T requests that GTE unbundle twelve specific elements and their features, functions, and capabilities: Network Interface Device ("NID"), Loop Distribution, Loop Concentrator/Multiplexer, Loop Feeder, Local Switching, Operator Systems, Dedicated Transport, Common Transport, Tandem Switching, Signaling Link Transport, Signal Transfer Points, and Service Control Points/Databases. As AT&T states, the Commission has previously found that it is technically feasible for GTE to provide these elements.¹³ The parties have partially resolved these issues. They seek the Commission's decision only on unbundling the local loop facility; local switching; operator systems; and the signaling elements, including AIN capabilities.

GTE shall provide AT&T access to each of the network elements requested by AT&T, including all the features, functions, and capabilities of each element, with the following clarifications: (1) GTE must unbundle integrated-digital-loop-carrier-delivered loops on a case-by-case basis. Any disputes may be resolved through the Commission's

¹³ See AT&T Post-Hearing Brief at 46, citing the Commission's Order in Case No. 96-440 at 13.

complaint process, and (2) unbundled local switching includes all the features, functions, and capabilities of the local switch.¹⁴

Regarding access to AIN services, AT&T proposes that GTE be required to unbundle its signaling system and provide unmediated access to AIN triggers. If mediation is required by the Commission, AT&T proposes that mediation be required for all providers, including GTE. GTE contends that further unbundling of its signaling system is not technically feasible and to do so would jeopardize network integrity. The Commission finds that GTE should unbundle its signaling system only to the extent required by 47 C.F.R. § 51.319(e)(ii)-(iv). The Commission further finds that GTE may require mediated access to AIN capabilities for a 90-day period. If, during this period, AT&T reliably interfaces with the AIN capabilities, use of mediation devices shall be discontinued.

IV. PRICES FOR EACH UNBUNDLED ELEMENT AT&T HAS REQUESTED (PARTIES' ISSUES 25, 26 and 27)

GTE argues, as it did in Case No. 96-440¹⁵ and Case No. 96-467,¹⁶ that it must be made "whole" and that its market-determined efficient components pricing rule ("M-ECPR") is an appropriate basis for setting prices for unbundled network elements. The Commission, applying the rationale for its previous decisions, rejects GTE's arguments.

¹⁴ See 47 C.F.R. Section 51.319(c).

¹⁵ Case No. 96-440, Order dated December 23, 1996 at 13-23.

¹⁶ Case No. 96-467, Petition by American Communications Services, Inc, and Certain of Its Local Exchange Subsidiaries, for Arbitration with GTE South Incorporated and Contel of Kentucky, Inc. Pursuant to The Telecommunications Act of 1996, Order dated January 17, 1997 at 2-3.

This Commission will not adopt "make-whole" pricing philosophies which may leave the ILEC indifferent to local exchange competition.

The Commission affirms its previous decision that all unbundled network element prices should be based upon TELRIC cost studies, where provided, and include a reasonable proportion of joint and common costs. Appendix 1 contains prices for all unbundled network elements and the collocation prices contained in Appendix 1 of the Commission's December 23, 1996 Order in Case No. 96-440. These collocation prices are being used because the cost studies filed by GTE and AT&T do not contain proposed collocation prices.

It should be noted that a large portion of GTE's Response to AT&T's Petition ("GTE Response"), like its arguments and testimony during the hearing in this matter, is devoted to discussion of its alleged constitutional right to recover all its historic costs and to earn some allegedly "fair" rate of return on its investment.

Although the Commission is not the proper forum to adjudicate constitutional issues, the Commission recognizes that outright confiscation implicates constitutional concerns. See Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989). However, the Commission rejects GTE's argument to the extent it implies GTE has some inalienable right to a particular level of profit. Furthermore, property which has been dedicated to a public purpose can be regulated and even physically occupied if the regulation involves the dedicated public purpose. Munn v. Illinois, 94 U.S. 113, 126 (1876). Thus, to the limited extent that collocation and unbundled facilities requirements may constitute a "taking," there is no constitutional violation if GTE is justly compensated, e.g., if it

receives "what a willing buyer would pay . . . to a willing seller." United States v. Miller, 317 U.S. 369, 374 (1943). The prices set by this Order meet this standard. Finally, Section 252(d)(1)(A) of the Act specifically states that the price set for a network element or interconnection must be based on the cost of that element or interconnection, as "determined without reference to a rate-of-return or other rate-based proceeding" (emphasis added). That section also states that a commission "may" add a reasonable profit to the cost-based price it sets. Id. The prices set by this Order meet this standard.

V. PRICES FOR CERTAIN SUPPORT ELEMENTS
RELATING TO INTERCONNECTION AND NETWORK
ELEMENTS (PARTIES' ISSUE 29)

AT&T asserts that access to poles, conduits, ducts, and rights-of-way should be priced at TELRIC plus a reasonable allocation of forward-looking joint and common costs. AT&T also asserts that GTE should be required to produce adequate cost documentation to enable the Commission to set cost-based prices.

GTE proposes that established tariffed or contract prices should be used for existing support functions or services and that, to the extent a new support function is necessary, the price should be set at cost plus a reasonable profit.

The Commission finds that the rates for access to poles, ducts, conduits, and rights-of-way should be developed consistently with principles found at 47 U.S.C. Section 224(d). Cost studies should be provided for these supporting elements within 45 days of this Order consistent with decisions herein.

VI. LIMITATIONS ON AT&T'S ABILITY TO COMBINE
UNBUNDLED NETWORK ELEMENTS WITH ONE
ANOTHER, WITH RESOLD SERVICES, OR WITH
AT&T'S OR A THIRD PARTY'S FACILITIES, TO
PROVIDE TELECOMMUNICATIONS SERVICE
(PARTIES' ISSUE 16)

In Case No. 96-440, the Commission ruled that GTE must, in accordance with the Act, at Section 251(c)(3), provide network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." The Commission affirms that decision and rejects GTE's argument that the purchase of elements to create service pursuant to Section 251(c)(3) must be priced at the rate for purchase of service for resale under Section 251(c)(4). However, AT&T is incorrect in asserting that the Commission has ruled that new entrants must be permitted to combine network elements purchased from GTE with resold services.

AT&T may combine network elements, whether those elements are its own or are purchased from GTE, in any manner it chooses to provide service. If AT&T wishes to purchase service for resale from GTE pursuant to Section 251(c)(4), it purchases the entire service as is and at the resale rate.

VII. REAL-TIME AND INTERACTIVE ACCESS VIA
ELECTRONIC INTERFACES (PARTIES' ISSUE 5)

AT&T requests electronic interactive access to perform pre-ordering, ordering, provisioning, maintenance and repair, and billing. GTE and AT&T have agreed in principle that GTE will provide AT&T with direct access to GTE's electronic interfaces with respect to both resale and unbundled network elements. The only remaining issues are determining when GTE will provide permanent electronic interfaces, the form in

which GTE will provide those interfaces, and how costs will be recovered. AT&T requests that the Commission order GTE to abide by its agreement that it will provide in Kentucky the same solution it will provide in California. If the California solution is not adopted, AT&T requests that the Commission order GTE to provide interactive electronic interface arrangements for all of its operations support systems because, it contends, such access is essential to a new entrant's ability to service its local telephone customers.

The Commission recognizes the importance of real-time access in a competitive environment and agrees that GTE should provide this access. Because the FCC's target date for such access was January 1, 1997,¹⁷ GTE should, in good faith, attempt to provide the access as soon as possible. In the meantime, it must offer AT&T an interim solution.

In Case No. 96-440, the Commission ruled that permanent solutions should be available and implemented by July 1, 1997. GTE states that while it is working diligently within the industry to develop the long-term solution, no evidence was presented as to when a final solution could be achieved. GTE contends that it would be premature for the Commission to order the implementation of a specific type of long-term electronic interface by a date certain and contends that the July 1, 1997 date is arbitrary. The

¹⁷ In FCC 96-476, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (December 13, 1996), Paragraph 11, the FCC stated it does not intend to initiate enforcement action against ILECs that do not meet the January 1 date but are making good faith efforts to provide the access "within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission."

Commission rejects GTE's argument and affirms the July 1, 1997 implementation date.

Moreover, GTE ignores the fact that it has already missed the FCC deadline, January 1, 1997. When parties petitioned the FCC to postpone the deadline, the FCC refused to do so. See FCC 960476, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (December 13, 1996). The FCC did state that it will not initiate enforcement action against ILECs that do not meet the deadline as long as those ILECs are making good faith efforts to provide the access "within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission." Id. at Paragraph 11. GTE's argument that it need not comply with the Commission-imposed deadline, coupled with its failure to present evidence regarding what it considers to be a reasonable implementation schedule, comes perilously close to indicating that GTE is not handling this matter in good faith.

In Case No. 96-482, BellSouth Telecommunications, Inc. ("BellSouth") indicated it would be able to provide the access by July 1, 1997. If GTE pursues this matter diligently, there does not appear to be any reason why it, too, cannot meet this target date. Nor does there appear to be any reason why GTE should receive additional time beyond that received by BellSouth. Accordingly, the Commission affirms its earlier decision. GTE should, in good faith, attempt to provide the access as soon as possible. A permanent solution should be implemented by July 1, 1997.

Finally, as decided by the Commission in Case No. 96-440, the resultant costs incurred by GTE should be borne by the alternate local exchange carriers ("ALECs") on

a fairly apportioned basis. As competition develops, additional ALECs will be required to bear their portion of the costs.

VIII. PROPOSED REQUIREMENT THAT GTE ROUTE
DIRECTORY ASSISTANCE AND OPERATOR
SERVICES CALLS DIRECTLY TO AT&T's PLATFORM
(PARTIES' ISSUE 6)

AT&T proposes that the Commission reconsider its prior decision in Case No. 96-440 regarding direct routing in the resale environment and determine that direct routing is technically feasible.

GTE contends that the customized routing to AT&T's platforms of operator services and directory assistance calls, as proposed by AT&T, is not technically feasible for all switches. GTE proposes to provide customized routing on an interim, short-term basis upon the following terms and conditions: (1) AT&T shall submit reasonable requests and identify those geographic areas where it wants customized routing; (2) within a reasonable time after receiving AT&T's notification, GTE shall identify its switches serving the designated area and advise AT&T whether customized routing is technically feasible for those switches; (3) if customized routing is technically feasible, GTE shall make such routing available within a reasonable time period; (4) AT&T shall pay all the costs associated with its selective routing request; and (5) the parties shall work to establish a long-term industry solution.¹⁸ GTE requests that the Commission adopt its approach for a short-term solution until such time as the industry develops a long-term solution.

¹⁸ See GTE Post-Hearing Brief at 41.

The Commission affirms its prior decision regarding direct routing in the resale environment and will not require GTE to furnish resold tariffed services minus operator services. The Commission reaffirms its decision here, but notes that, if an ILEC and reselling ALEC reach a mutual agreement regarding such service separations, the Commission will accept this arrangement.

The Commission further finds that the general terms of GTE's proposal to provide customized routing on an interim basis is reasonable and should be implemented. Any disputes may be resolved through the Commission's complaint process.

IX. PROPOSED REQUIREMENT THAT GTE PROVIDE
AT&T WITH THE BILLING AND USAGE RECORDING
SERVICES THAT AT&T REQUESTED (PARTIES' ISSUE 7)

GTE has agreed to provide billing and usage recording services for resold services, interconnection and unbundled elements. GTE will use the Carrier Access Billing System ("CABS") for access services. GTE will use the customer billing system ("CBSS") for local services until the capability to provide line-side services can be built into the CABS system in early 1997. It is GTE's position that there is nothing to be decided. It is AT&T's opinion that the only issues to decide are when GTE will be able to implement CABS for both end-user and line-side billing and how the costs of implementing CABS will be recovered. Because the Commission, in Case No. 96-440, ordered GTE to provide billing and usage recording systems to MCI by January 1, 1997, the Commission affirms its prior decision that GTE must provide billing and usage recording systems as soon as technically possible.¹⁹

¹⁹ See Issue 14 for the discussion of how implementation costs shall be recovered.

X. ACCESS TO GTE'S DIRECTORY ASSISTANCE
DATABASE (PARTIES' ISSUE 10)

GTE has agreed to provide initial loads of its directory listings and daily updates, including additions and deletions, to AT&T via magnetic tape. AT&T requests that the Commission require GTE to abide by its proposed agreement, which is acceptable to AT&T if it is required to pay only the actual costs of preparing and delivering the tape and not any form of overhead or other costs.²⁰ It is GTE's belief that this issue is resolved and, therefore, does not require the Commission's decision.²¹ The Commission finds that AT&T should bear the reasonable costs of the directory assistance database attributable to it. AT&T and GTE may petition the Commission for resolution of any billing disputes.

XI. CUSTOMER AUTHORIZATION FOR ACCESS TO
CUSTOMER ACCOUNT INFORMATION
(PARTIES' ISSUE 13)

The Commission addressed the issue of access to customer records in Case No. 96-440,²² and it affirms that decision here. When customer information is withheld from an ALEC, a competitive disadvantage is created. To offer relief, the Commission has decided that an ALEC's provision of a blanket Letter of Authorization to the ILEC will be sufficient to allow the ALEC access to customer records.

²⁰ See AT&T Post-Hearing Brief at 41.

²¹ See GTE Post-Hearing Brief at 62.

²² Case No. 96-440, Order dated December 23, 1996 at 11.

**XII. COST RECOVERY OF DEVELOPMENT AND
IMPLEMENTATION OF SYSTEMS AND PROCESSES
REQUIRED UNDER THE ACT (PARTIES' ISSUE 14)**

In Case No. 96-440, the Commission decided that implementation costs should be borne by the ALECs on a fairly apportioned basis and that additional ALECs will be required to bear their share of these costs, as competition develops. AT&T requests a decision from the Commission requiring that these costs be apportioned among all those who benefit from the development and implementation, including GTE. The Commission finds that ILECs will not have to contribute to this cost recovery.

**XIII. ACCESS TO POLES, DUCTS, CONDUITS, AND
RIGHTS-OF-WAY (PARTIES' ISSUE 17)**

AT&T seeks access to GTE's poles, ducts, conduits, and rights-of-way. GTE agrees to provide such access where there is available space, and if the poles, ducts, conduits, and rights-of-way are owned and controlled by GTE.

In Case No. 96-440, the Commission ruled that GTE should provide AT&T with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.²³ GTE requests that the Commission further order the additional requirement that the access will be provided only where there is available space.

Pursuant to federal law, ILECs must provide to ALECs the same access to poles, ducts, conduits, and rights-of-way that they provide themselves. GTE must therefore provide to competing carriers the same access as it provides itself. Should instances

²³ Case No. 96-440, December 23, 1996 Order at 25.

arise where AT&T, or any other ALEC, believes discrimination has occurred, the complaint process is available to resolve the issues.

In Case No. 96-440, the Commission also ruled that 30 business days to respond to requests for availability of poles, ducts, conduits, and rights-of-way is reasonable, and that AT&T shall begin construction of facilities on GTE's poles, ducts, conduits, and rights-of-way within 6 months of notification of the availability of space. The Commission affirms these decisions.

The Act states at Section 251(b)(4) that the LECs have the duty "to afford access to the poles, ducts, conduits, and rights of way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224." A rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than the amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital cost of the utility attributable to the entire pole, duct, conduit, or right of way.²⁴ The Commission finds that GTE and AT&T should develop rates for access to poles, ducts, conduits, and rights-of-way that are consistent with federal law. If the parties fail to reach an agreement concerning the rates, then they will be governed by rates contained in regulations to be prescribed by the FCC.²⁵

²⁴ 47 U.S.C. Section 224(d).

²⁵ See 47 U.S.C. Section 703(7)(e)(1).

XIV. PROPOSED REQUIREMENT THAT GTE PROVIDE
INTERIM NUMBER PORTABILITY SOLUTIONS INCLUDING
REMOTE CALL FORWARDING, FLEX-DIRECT INWARD
CALLING, ROUTE INDEX-PORTABILITY HUB, AND
LOCAL EXCHANGE ROUTING GUIDE REASSIGNMENT
(PARTIES' ISSUE 18)

AT&T proposes that GTE be required to provide route index-portability hub and local exchange routing guide ("LERG") reassignment in addition to remote call forwarding and direct inward dialing/flexible direct inward dialing as interim number portability options. AT&T maintains that all of these options are technically feasible and necessary for its operations.

GTE contends that it should only be required to provide remote call forwarding and direct inward dialing as interim number portability options. GTE argues that these two options are the only ones currently available as specified by the FCC.

The Commission finds that remote call forwarding and direct inward dialing/flexible direct inward dialing should be provided as interim number portability options. Furthermore, each party shall bear its own cost for providing interim number portability options.

XV. LIMITATIONS ON, AND COSTS OF, COLLOCATION
(PARTIES' ISSUE 20)

AT&T requests that the Commission affirm its prior orders relating to collocation and it seeks resolution of two remaining issues relating to collocation: (1) the types of facilities in which collocation must be permitted; and (2) the option of a new entrant to choose "virtual" collocation. AT&T contends that GTE should be required to allow collocation at all facilities that house GTE network facilities, unless GTE makes an appropriate showing that it is not technically feasible to allow collocation at a given

facility. Furthermore, AT&T contends that GTE should provide the option of choosing either physical or virtual collocation.

In support of its argument, AT&T states that the FCC Order requires that a new entrant be permitted to collocate equipment on either a physical or virtual basis at the new entrant's option.²⁶ As it did in Case No. 96-440, GTE seeks to limit the use of the collocated space.

The Commission affirms its prior decisions that: (1) GTE, pursuant to the Act, must provide collocation on rates, terms and conditions that are just, reasonable, and nondiscriminatory,²⁷ (2) virtual collocation may be required if GTE demonstrates to the Commission a lack of physical space,²⁸ and (3) the costs for physical presence on GTE's premises should be based on comparable prices for leased office space per square foot. Pursuant to federal law, ALECs have the right to collocate telecommunications equipment that they deem necessary to provide service to their end-users. Furthermore, interconnection, or cross-connection, between collocators is mandated by the FCC.²⁹

AT&T states it should be permitted to cross-connect to other entities collocated at GTE's central offices by making arrangements directly with the other entity without GTE assistance and without payment to GTE. If, on the other hand, it requires GTE's assistance, it proposes to compensate GTE on a time and materials basis for the personnel

²⁶ See AT&T Post-Hearing Brief at 55.

²⁷ GTE argues that this requirement constitutes a "taking" of its property. For reasons discussed supra, the Commission rejects this contention.

²⁸ 47 U.S.C. Section 251(c)(6). FCC Order 96-355, Appendix B, Section 51.323.

²⁹ FCC Order at Paragraph 594.

and equipment used to make the connection. It states that GTE is not entitled to a transiting or traffic sensitive charge for permitting such cross-connection. GTE states it will provide the requested connection through purchase of an unbundled element. GTE claims that the FCC's First Report and Order, at Paragraph 595, which requires ILECs to permit cross-connection as AT&T requests is a "taking" of GTE's property.

The Commission does not agree that a "taking" occurs in such a cross-connection, if GTE is justly compensated. Property which has been dedicated to a public purpose may be regulated and even physically occupied if the regulation involves the dedicated public purpose. Munn v. Illinois, 94 U.S. 113, 126 (1876). Moreover, the portion of the FCC Order that requires GTE to permit cross-connection has not been stayed, and its provisions are binding. Accordingly, cross-connection between collocated entities will be required. GTE must be compensated for any material and labor if its assistance is required. In addition, GTE must be paid a reasonable amount for the use of its premises by AT&T. The price for AT&T's physical presence on GTE property should be based on comparable prices for leased office space per square foot in the same geographic area.

XVI. ACCESS TO UNUSED TRANSMISSION MEDIA
(PARTIES' ISSUE 21)

GTE argues that unused transmission media ("dark or dry fiber") is neither a network element nor a retail telecommunications service and that it should not, therefore, be required to make this resource available to competitors. However, the Commission has not defined dry fiber based on either of these definitions. The Commission has defined dry fiber as a resource to the public switched network; it constitutes an access point to the public switched network as does a pole, duct, conduit, or right-of-way. The

latter access points are neither network elements nor telecommunications services and the Act has made them available to competing companies.³⁰

The Commission ruled in Case No. 96-440 that an ALEC should begin construction using any requested dark fiber within six (6) months of the execution of a lease or buy contract. The Commission further decided that the ALEC should not propose to lease or buy dark fiber for future unspecified use and that GTE should not refuse to lease or sell it to the ALEC without legitimate business purposes for doing so. However, upon rehearing in Case No. 96-440, the Commission amended its decision to state that, if GTE refuses a request, it should show that it will need this dark fiber within three (3) years rather than the five (5) years specified in the Commission's original Order. The Commission affirms its decisions as subsequently amended. As previously noted, this shorter time frame conforms to a more reasonable LEC planning cycle and will enable the carrier to review budgeting plans.

Finally, because dark fiber is neither a network element nor a telecommunications service available for resale, it shall not be priced as such. The parties are free to negotiate rates and may bring complaints regarding unfair pricing or restrictions of use to the Commission.

**XVII. PRICE FOR CALL TRANSPORT AND TERMINATION/BILL
AND KEEP (PARTIES' ISSUES 27 AND 28)**

AT&T argues that the price for the transport and termination of local traffic should be set at TELRIC. GTE argues that TELRIC pricing is inappropriate and that the rate

³⁰ See 47 U.S.C. Section 251(b)(4).

for transport and termination should be established to recognize local traffic's relationship to intrastate switched access because local interconnection provides the same functionalities as switched access.

The Commission has decided that interconnection should be priced at cost plus a reasonable profit based upon Section 252(d)(1) of the Act. Thus, the pricing for termination of local calls is based upon TELRIC plus a reasonable proportion of joint and common costs.³¹

The Commission has stated that "the market will be best served by swift development of the necessary recording and billing arrangements to provide reciprocal compensation among local carriers."³² Thus, the Commission will require reciprocal compensation unless the two parties agree to a bill and keep arrangement, which cannot exceed one year.

XVIII. PERFORMANCE STANDARDS, QUALITY ASSURANCE
AND QUALITY CERTIFICATION, INCLUDING PROPOSED
REQUIREMENT THAT GTE EXPLICITLY ASSUME
RESPONSIBILITY FOR CAUSING AT&T UNCOLLECTIBLES
AND/OR UNBILLABLES (PARTIES' ISSUES 3 AND 4)

The Act requires, at Section 251(c)(2)(C), that ILECs must provide service to requesting carriers "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." Issues numbered 3 and 4 of the Joint Issues List deal with demands made by AT&T that it says are necessary to ensure that GTE complies with

³¹ See Section IV and Appendix 1 of this Order.

³² Case No. 96-431, Order dated January 29, 1997 at 10.

its responsibilities under the Act. AT&T requests that the Commission reconsider its decision in Case No. 96-440 that GTE is not required to implement specific guidelines and measures to ensure that AT&T gets service at parity with that GTE provides itself. In support of its position, AT&T contends that the implementation of measures and guidelines will not be burdensome and will provide AT&T with a means of determining disparate treatment and identifying the specific areas of alleged disparity to bring to the Commission's attention. AT&T also states that "the Georgia and Tennessee Commissions have accepted AT&T's position, ordering that AT&T's Interconnection Agreement with BellSouth include indemnification, dispute resolution and penalty provision." It requests that this Commission do the same.

The Commission agrees that negotiated terms for alternative dispute resolution, objective measurements of the parties' expectations, and mutual liability provisions may be useful to parties to any contract. However, it is unnecessary for the Commission to require any such terms and conditions. The service parity requirements of the Act are clear, and GTE has not indicated that it will fail to abide by them. There is no reason for this Commission to assume that GTE will not in good faith comply with its obligations under the law. Should problems arise regarding the quality of service provided, AT&T may bring the matter to the Commission's attention.

XIX. CONTRACT TERM AND MODIFICATIONS (PARTIES' ISSUE 30)

AT&T contends that the contract should have a five-year term because this is the minimum time required for it to acquire, configure, service and market services and elements obtained from GTE. However, due to continuing and radical changes in the

telecommunications industry, the Commission finds that a two-year term is more reasonable.


AT&T also argues that GTE should not be able to modify the contract by subsequent tariff filings. But, to meet the rapid market changes, GTE must be permitted to propose tariffs for Commission review. AT&T, of course, may notify the Commission of its opposition to any tariff changes that will affect its contract with GTE.

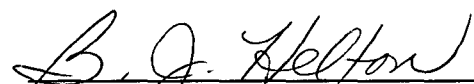
Having reviewed the record and having been otherwise sufficiently advised, the Commission THEREFORE ORDERS that:

1. The parties shall renew their negotiations to complete their agreement in accordance with the principles and limitations described herein.
2. Best and final offers on terms which are encompassed within the arbitrated issues and upon which the parties remain unable to agree shall be filed within 30 days of the date of this Order.
3. Additional cost studies required to complete the Commission's investigation into appropriate pricing as discussed herein and in the final Order in Case No. 96-440 shall be filed by GTE within 45 days of the date of this Order.

Done at Frankfort, Kentucky, this 14th day of February, 1997.

PUBLIC SERVICE COMMISSION


Vice Chairman


Commissioner

DISSENT OF CHAIRMAN LINDA K. BREATHITT

I respectfully dissent from Section VI, Parties' Issue 16 regarding pricing of recombined network elements. My rationale is set forth in Case No. 96-431, Petition by

MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996, Order dated January 29, 1997 (Linda K. Breathitt, dissenting).



Linda K. Breathitt
Chairman

ATTEST:



Executive Director

APPENDIX 1

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 96-478 DATED February 14, 1997.**

GTE - AT&T LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
LOCAL LOOPS	
Local Loop	
2-Wire Analog Voice Grade Loop, Per Month	\$19.65
Nonrecurring	Study Required
4-Wire Analog Voice Grade Loop, Per Month	\$27.51
Nonrecurring	Study Required
Network Interface Device	
Basic NID	\$1.86
12x NID	\$2.00
LOCAL SWITCHING (Must purchase a Port)	
Ports	
2 Wire Basic Port	\$4.02
Nonrecurring	Study Required
DS-1 Port	\$60.06
Nonrecurring	Study Required
Local Switching	
Originating MOU	
Setup	\$0.0088173
MOU	\$0.0012553
Average MOU	\$0.0036192
Terminating MOU	
Setup	\$0.0073541
MOU	\$0.0012560
Average MOU	\$0.0032276
Intrastate End Office Switching	
Originating MOU	
Setup	\$0.0088173
MOU	\$0.0012553
Average MOU	\$0.0036192
Terminating MOU	
Setup	\$0.0073541
MOU	\$0.0012560
Average MOU	\$0.0032276
Interconnection Charge	
Intrastate MOU	0.0078026
Carrier Common Line	
Intrastate	
-Originating	\$0.0318779
-Terminating	\$0.0318779

GTE - AT&T LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
Interstate End Office Switching Originating MOU Setup MOU Average MOU Terminating MOU Setup MOU Average MOU Interconnection Charge Intrastate MOU Carrier Common Line Intrastate -Originating -Terminating Features Various	\$0.0088173 \$0.0012553 \$0.0036192 \$0.0073541 \$0.0012560 \$0.0032276 \$0.0079315 \$0.0100000 \$0.0195150 Resale Tariff
LOCAL INTERCONNECTION A Bill and Keep +/- 10% Traffic B Out of Balance Terminating Traffic Average MOU	Interim \$0.0032276
DEDICATED TRANSMISSION LINKS (major elements only) Entrance Facility 2 Wire Voice 4 Wire Voice DS1 Standard 1st System DS1 Standard Add'l System DS3 Protected, Electrical DS1 to Voice Multiplexing DS3 to DS1 Multiplexing Direct Trunked Transport Voice Facility Per ALM DS1 Facility Per ALM DS1 Per Termination DS3 Facility Per ALM DS3 Per Termination	\$31.14 \$44.01 \$145.20 \$145.20 \$908.83 \$175.00 \$256.85 \$2.52 \$1.39 \$31.83 \$33.02 \$306.99
COMMON/SHARED TRANSMISSION FACILITIES Transport Termination Average MOU / Term Transport Facility per Mile Average MOU / Mile	\$0.0000726 \$0.0000031

GTE - AT&T LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
TANDEM SWITCHING	
Tandem Switching	
Setup	\$0.0011286
MOU	\$0.0005183
Average MOU	\$0.0008209
DATABASES AND SIGNALING SYSTEMS	
Signaling Links and STP	
56 Kbps Links	\$83.91
DS-1 Link	\$145.20
Signal Transfer Point (STP) Port Term	\$240.97
Call Related Databases	
Line Information Database (ABS-Quenes)	\$0.039
Line Information Database Transport (ABS-Quenes)	\$0.0051
Toll Free Calling Database (DB800 Quenes)	\$0.010909
SERVICE PROVIDER NUMBER PORTABILITY	
-Service Provider Number Portability per number ported	\$3.93
-Simultaneous Call Capability - Additional	\$2.61
OTHER NETWORK ELEMENTS	
Operator Services	Under Study
Directory Assistance	Under Study
Subscriber Numbers	Under Study
COLLOCATION ELEMENTS	
Nonrecurring Costs	
Physical Engineering Fee per Request	\$3,749.00
Building Modifications per Central Office	
Simple	\$15,468.00
Moderate	\$21,305.00
Complex	\$27,189.00
DC Power per 40 Amps	\$4,191.00
Cable Pull per 12 Fibers	\$1,075.00
Cage Enclosures per Cage	\$4,705.00
Monthly Recurring	
Partitioned Space per Sq. Ft.	\$2.33
DC Power per 40 Amps	\$388.26
Cable Pull per 12 Fibers	\$15.22
Monthly Recurring for EIS	
DS0 level connection	\$1.53
DS1 level connection	\$3.22
DS3 level connection	\$23.84